

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTHONY J. HANNON

Plaintiff,

v.

Case No. 2:06-CV-183

TIMOTHY STALLMAN, *et al.*,

HON. GORDON J. QUIST

Defendants.

MEMORANDUM OPINION

Plaintiff Anthony J. Hannon (Hannon), an inmate at the Oaks Correctional Facility in Manistee, Michigan, filed suit against Defendants Timothy Stallman and Mike Kennerly pursuant to 42 U.S.C. § 1983. He alleges indifference to his serious medical needs in violation of the Eighth Amendment. Hannon suffers from toenail fungus and athletes' foot and claims Defendants treated his athletes' foot but refused to provide him the anti-fungal medication he requested for his toenail fungus. This Court has already dismissed Kennerly from the case. Defendant Stallman subsequently filed a Motion to Dismiss, (docket no. 22), and Plaintiff filed a Motion for Summary Judgment (docket no. 27.) The Magistrate Judge filed a Report and Recommendation recommending that Defendant's Motion to Dismiss be granted, Plaintiff's Motion for Summary Judgment be denied, and the case dismissed. The Report and Recommendation rejects Defendant's argument that Plaintiff's claim should be dismissed for failure to exhaust, but recommends Defendant's motion be granted because Plaintiff has not demonstrated that his is a serious medical need. It also recommends that the Court find no good-faith basis for appeal. Plaintiff timely filed his objection to the Report and Recommendation and Defendant replied. After de novo review, the Court agrees that

Plaintiff has not demonstrated that toenail fungus is a serious medical condition, and adopts the Report and Recommendation as its Opinion.

Defendant informed Plaintiff that MDOC procedure does not permit him to prescribe anti-fungal medication to treat toenail fungus because the condition is merely cosmetic. He did offer to file Plaintiff's toenail down to minimize the discomfort he experienced while wearing shoes. Defendant was clearly not indifferent to Plaintiff's discomfort. Unfortunately, since medical resources are scarce, MDOC must perform cost-benefit analyses in determining how they are allocated. Its decision that a minor complaint such as toenail fungus warrants only a pedicure is merely a disagreement regarding the necessary and appropriate course of treatment and does not rise to the level of deliberate indifference.

Furthermore, were it deliberate indifference, Plaintiff would not be entitled to relief because he has not established that he suffers from a serious medical problem. While toenail fungus is unsightly, Plaintiff offers no evidence that it poses serious risks, affects his daily activities, or causes substantial pain. That the fungus has spread to several other toenails does not convince the Court that Plaintiff's medical problem is serious.

For the aforementioned reasons, the Magistrate Judge's Report and Recommendation (docket no. 34) recommending that Defendant's Motion to Dismiss (docket no. 22) be **GRANTED** and Plaintiff's Motion for Summary Judgment (docket no. 27) be **DENIED** is **APPROVED AND ADOPTED** as the Opinion of this Court. Furthermore, the Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

A separate Order will issue.

Dated: March 12, 2009

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE